

## **REMARKS**

Reconsideration and allowance of the above-referenced application are respectfully requested. Applicant petitions for a three-month extension of time to reply to the office action mailed February 17, 2009. Reconsideration of the application is respectfully requested.

### **REJECTION OF CLAIMS 19 AND 21 UNDER 35 U.S.C. §112**

Claims 19 and 21 were rejected under 35 U.S.C. §112 due to the use of the word "preferably." Applicant has amended claims 19 and 21 to delete the clause that uses the word "preferably." This overcomes the rejection under 35 U.S.C. §112

### **REJECTION OF CLAIMS 19 AND 21 35 U.S.C. §102(b)**

Claims 19 and 21 are rejected under 35 U.S.C. §103(a) as allegedly being allegedly being unpatentable over U.S. Patent No. 3,788,327 to Donowitz in view of U.S. Patent No. 5,300,020 to L'Esperance. However, Donowitz and L'Esperance, both alone and in combination, fail to teach or suggest every element of claims 1 and 21. For example, both Donowitz and L'Esperance fail to disclose or suggest that a portion of the enlarged diameter of the distal end of the fluid transfer tube is positioned flat against the inner surface of the cornea. In Donowitz, the distal end of the device does not have an enlarged diameter and therefore cannot have an enlarged diameter portion positioned flat against the cornea. The L'Esperance device has an enlarged distal end, but the enlarged distal end is not positioned flat against the inner surface of the cornea.

Rather, as shown in Figures 1 and 4 of L'Esperance, the enlarged distal end is space from the cornea.

In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of the rejection of independent claims 19 and 21.

Claim 20 was rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Donowitz in view of L'Esperance and U.S. Patent No. 5,743,868 to Brown. As discussed above, independent claim 19 recites features that are not taught or suggested by Donowitz. Brown fails to provide the missing teachings. Claim 20 is patentable based on its dependency on claim 19 as well as on its own merit.

#### **NEW CLAIM**

Claim 20 is new. Claim 20 recites that the tubular portion of the implant has a length equal to a thickness of the cornea. None of the cited art discloses or suggests such a feature.

#### **CONCLUSION**

It is believed that all of the pending claims have been addressed in this paper. However, failure to address a specific rejection, issue or comment, does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above are not intended to be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper.

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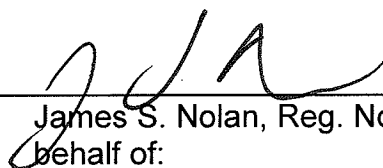
Attorney's Docket No.: 37528-503N01US

In view of the above amendments and remarks, reconsideration and allowance of the application are respectfully requested.

Authorization for a credit card payment of the filing fee of \$555 is submitted herewith. No additional fees are believed to be due, however, the Commissioner is authorized to charge any additional fees or credit overpayments to Deposit Account No. 50-0311.

Respectfully submitted,

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behalf of:

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